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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ABANTE ROOTER AND PLUMBING) Case No.

INC, individually and on behalf of all)
others similarly situated,)

CLASS ACTION

Plaintiff,

**COMPLAINT FOR VIOLATIONS
OF:**

VS.

DRYCARE RESTORATION, INC. dba)
FLOOD LOCAL; and DOES 1 through)
10, inclusive,)

1. NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]
2. WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. §227(b)]

Defendant.

DEMAND FOR JURY TRIAL

Plaintiff ABANTE ROOTER AND PLUMBING INC (“Plaintiff”), individually and on behalf of all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

1 **NATURE OF THE CASE**

2 1. Plaintiff brings this action individually and on behalf of all others
3 similarly situated seeking damages and any other available legal or equitable
4 remedies resulting from the illegal actions of Defendant, DRYCARE
5 RESTORATION, INC. (“Defendant”), in negligently, knowingly, and/or willfully
6 contacting Plaintiff on Plaintiff’s cellular telephone in violation of the Telephone
7 Consumer Protection Act, 47 *U.S.C. § 227 et seq.* (“TCPA”), thereby causing
8 Plaintiff to incur unwanted and unnecessary charges and invading Plaintiff’s
9 privacy.

10 **JURISDICTION & VENUE**

11 2. Jurisdiction is proper under 28 *U.S.C. § 1332(d)(2)* because Plaintiff,
12 a California corporation with its principle place of business also in California, seeks
13 relief on behalf of a Class, which will result in at least one class member belonging
14 to a different state than that of Defendant, a California company. Plaintiff also seeks
15 up to \$1,500.00 in damages for each call in violation of the TCPA, which, when
16 aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00
17 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and
18 the damages threshold under the Class Action Fairness Act of 2005 (“CAFA”) are
19 present, and this Court has jurisdiction.

20 3. Venue is proper in the United States District Court for the Central
21 District of California pursuant to 28 *U.S.C. § 1391(b)(2)* because Defendant does
22 business within the State of California and Plaintiff resides within the County of
23 Alameda.

24 **PARTIES**

25 4. Plaintiff, ABANTE ROOTER AND PLUMBING INC (“Plaintiff”),
26 is a rooting and plumbing business in Emeryville, California and is a “person” as
27 defined by 47 *U.S.C. § 153 (39)*.

28 5. Defendant, DRYCARE RESTORATION, INC. dba FLOOD LOCAL

1 (“Defendant”), is a restoration and damage servicer, and is a “person” as defined
2 by 47 U.S.C. § 153 (39).

3 6. The above named Defendant, and its subsidiaries and agents, are
4 collectively referred to as “Defendants.” The true names and capacities of the
5 Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are
6 currently unknown to Plaintiff, who therefore sues such Defendants by fictitious
7 names. Each of the Defendants designated herein as a DOE is legally responsible
8 for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the
9 Complaint to reflect the true names and capacities of the DOE Defendants when
10 such identities become known.

11 7. Plaintiff is informed and believes that at all relevant times, each and
12 every Defendant was acting as an agent and/or employee of each of the other
13 Defendants and was acting within the course and scope of said agency and/or
14 employment with the full knowledge and consent of each of the other Defendants.
15 Plaintiff is informed and believes that each of the acts and/or omissions complained
16 of herein was made known to, and ratified by, each of the other Defendants.

17 **FACTUAL ALLEGATIONS**

18 8. Beginning in or around February of 2016 and continuing through
19 March of 2016, Defendant contacted Plaintiff on Plaintiff’s cellular telephone
20 numbers ending in -3803 in an attempt to solicit Plaintiff to purchase Defendants’
21 services.

22 9. Defendants contacted or attempted to contact Plaintiff from telephone
23 numbers belonging to Defendants, including without limitation (725) 333-9706 and
24 (720) 445-7324.

25 10. Defendants used an “automatic telephone dialing system” as defined
26 by 47 U.S.C. § 227(a)(1) to place its calls to Plaintiff seeking to solicit its services.

27 11. Furthermore, at one or more instance during these calls, Defendant
28 utilized an “artificial or prerecorded voice” as prohibited by 47 U.S.C. §

1 227(b)(1)(A).

2 12. Defendant's calls constituted calls that were not for emergency
3 purposes as defined by 47 U.S.C. § 227(b)(1)(A).

4 13. Defendant's calls were placed to telephone number assigned to a
5 cellular telephone service for which Plaintiff incurs a charge for incoming calls
6 pursuant to 47 U.S.C. § 227(b)(1).

7 14. Plaintiff is not a customer of Defendant's services and has never
8 provided any personal information, including his telephone number, to Defendant
9 for any purpose whatsoever.

10 15. During all relevant times, Defendant did not possess Plaintiff's "prior
11 express consent" to receive calls using an automatic telephone dialing system or an
12 artificial or prerecorded voice on its cellular telephones pursuant to 47 U.S.C. §
13 227(b)(1)(A).

14 16. Defendant placed multiple calls soliciting its business to Plaintiff on
15 its cellular telephones beginning in or around April of 2016 and continued until in
16 or around June of 2016.

17 17. Such calls constitute solicitation calls pursuant to 47 C.F.R. §
18 64.1200(c)(2) as they were attempts to promote or sell Defendant's services.

19 18. Plaintiff received numerous solicitation calls from Defendant within a
20 12-month period.

21 19. Plaintiff requested for Defendant to stop calling Plaintiff during one
22 of the initial calls from Defendant, thus revoking any prior express consent that had
23 existed and terminating any established business relationship that had existed, as
24 defined under 16 C.F.R. 310.4(b)(1)(iii)(B).

25 20. Upon information and belief, and based on Plaintiff's experiences of
26 being called by Defendant after requesting they stop calling, and at all relevant
27 times, Defendant failed to establish and implement reasonable practices and
28 procedures to effectively prevent telephone solicitations in violation of the

1 regulations prescribed under 47 U.S.C. § 227(c)(5).

2 **CLASS ALLEGATIONS**

3 21. Plaintiff brings this action individually and on behalf of all others
4 similarly situated, as a member the two proposed classes (hereafter, jointly, “The
5 Classes”). The class concerning the ATDS claim for no prior express consent
6 (hereafter “The ATDS Class”) is defined as follows:

7 All persons within the United States who received any
8 solicitation/telemarketing telephone calls from
9 Defendant to said person’s cellular telephone made
10 through the use of any automatic telephone dialing
11 system or an artificial or prerecorded voice and such
12 person had not previously consented to receiving such
13 calls within the four years prior to the filing of this
14 Complaint

15 22. The class concerning the ATDS claim for revocation of consent, to the
16 extent prior consent existed (hereafter “The ATDS Revocation Class”) is defined
17 as follows:

18 All persons within the United States who received any
19 solicitation/telemarketing telephone calls from
20 Defendant to said person’s cellular telephone made
21 through the use of any automatic telephone dialing
22 system or an artificial or prerecorded voice and such
23 person had revoked any prior express consent to receive
24 such calls prior to the calls within the four years prior to
25 the filing of this Complaint.

26 23. Plaintiff represents, and is a member of, The ATDS Class, consisting
27 of all persons within the United States who received any solicitation telephone calls
28 from Defendant to said person’s cellular telephone made through the use of any
automatic telephone dialing system or an artificial or prerecorded voice and such
person had not previously not provided their cellular telephone number to

1 Defendant within the four years prior to the filing of this Complaint.

2 24. Plaintiff represents, and is a member of, The ATDS Revocation Class,
3 consisting of all persons within the United States who received any
4 solicitation/telemarketing telephone calls from Defendant to said person's cellular
5 telephone made through the use of any automatic telephone dialing system or an
6 artificial or prerecorded voice and such person had revoked any prior express
7 consent to receive such calls prior to the calls within the four years prior to the
8 filing of this Complaint.

9 25. Defendant, their employees and agents are excluded from The
10 Classes. Plaintiff does not know the number of members in The Classes, but
11 believes the Classes members number in the thousands, if not more. Thus, this
12 matter should be certified as a Class Action to assist in the expeditious litigation of
13 the matter.

14 26. The Classes are so numerous that the individual joinder of all of its
15 members is impractical. While the exact number and identities of The Classes
16 members are unknown to Plaintiff at this time and can only be ascertained through
17 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
18 The Classes includes thousands of members. Plaintiff alleges that The Classes
19 members may be ascertained by the records maintained by Defendant.

20 27. Plaintiff and members of The ATDS Class and The ATDS Revocation
21 Class were harmed by the acts of Defendant in at least the following ways:
22 Defendant illegally contacted Plaintiff and ATDS Class members via their cellular
23 telephones thereby causing Plaintiff and ATDS Class and ATDS Revocation Class
24 members to incur certain charges or reduced telephone time for which Plaintiff and
25 ATDS Class and ATDS Revocation Class members had previously paid by having
26 to retrieve or administer messages left by Defendant during those illegal calls, and
27 invading the privacy of said Plaintiff and ATDS Class and ATDS Revocation Class
28 members.

1 28. Common questions of fact and law exist as to all members of The
2 ATDS Class which predominate over any questions affecting only individual
3 members of The ATDS Class. These common legal and factual questions, which
4 do not vary between ATDS Class members, and which may be determined without
5 reference to the individual circumstances of any ATDS Class members, include,
6 but are not limited to, the following:

- 7 a. Whether, within the four years prior to the filing of this
8 Complaint, Defendant made any telemarketing/solicitation call
9 (other than a call made for emergency purposes or made with
10 the prior express consent of the called party) to a ATDS Class
11 member using any automatic telephone dialing system or any
12 artificial or prerecorded voice to any telephone number
13 assigned to a cellular telephone service;
- 14 b. Whether Plaintiff and the ATDS Class members were damaged
15 thereby, and the extent of damages for such violation; and
- 16 c. Whether Defendant and their agents should be enjoined from
17 engaging in such conduct in the future.

18 29. As a person that received numerous telemarketing/solicitation calls
19 from Defendant using an automatic telephone dialing system or an artificial or
20 prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting
21 claims that are typical of The ATDS Class.

22 30. Common questions of fact and law exist as to all members of The
23 ATDS Revocation Class which predominate over any questions affecting only
24 individual members of The ATDS Revocation Class. These common legal and
25 factual questions, which do not vary between ATDS Revocation Class members,
26 and which may be determined without reference to the individual circumstances of
27 any ATDS Revocation Class members, include, but are not limited to, the
28 following:

- a. Whether, within the four years prior to the filing of this Complaint, Defendant made any telemarketing/solicitation call (other than a call made for emergency purposes or made with the prior express consent of the called party) to an ATDS Revocation Class member, who had revoked any prior express consent to be called using an ATDS, using any automatic telephone dialing system or any artificial or prerecorded voice to any telephone number assigned to a cellular telephone service;
- b. Whether Plaintiff and the ATDS Revocation Class members were damaged thereby, and the extent of damages for such violation; and
- c. Whether Defendant and their agents should be enjoined from engaging in such conduct in the future.

31. As a person that received numerous telemarketing/solicitation calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, after Plaintiff had revoked any prior express consent, Plaintiff is asserting claims that are typical of The ATDS Revocation Class.

32. Plaintiff will fairly and adequately protect the interests of the members of The Classes. Plaintiff has retained attorneys experienced in the prosecution of class actions.

33. A class action is superior to other available methods of fair and efficient adjudication of this controversy, since individual litigation of the claims of all Classes members is impracticable. Even if every Classes member could afford individual litigation, the court system could not. It would be unduly burdensome to the courts in which individual litigation of numerous issues would proceed. Individualized litigation would also present the potential for varying, inconsistent, or contradictory judgments and would magnify the delay and expense

to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Classes member.

34. The prosecution of separate actions by individual Classes members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the other Classes members not parties to such adjudications or that would substantially impair or impede the ability of such non-party Class members to protect their interests.

35. Defendant have acted or refused to act in respects generally applicable to The Classes, thereby making appropriate final and injunctive relief with regard to the members of the Classes as a whole.

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b).

On Behalf of the ATDS Class and ATDS Revocation Class

36. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

37. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

38. As a result of Defendant' negligent violations of *47 U.S.C. § 227(b)*, Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)*.

39. Plaintiff and the ATDS Class and ATDS Revocation Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

On Behalf of the ATDS Class and the ATDS Revocation Class

40. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-35.

41. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of *47 U.S.C. § 227(b)*, and in particular *47 U.S.C. § 227 (b)(1)(A)*.

42. As a result of Defendant's knowing and/or willful violations of *47 U.S.C. § 227(b)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to *47 U.S.C. § 227(b)(3)(B)* and *47 U.S.C. § 227(b)(3)(C)*.

43. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

FIRST CAUSE OF ACTION

Negligent Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant's negligent violations of *47 U.S.C. §227(b)(1)*, Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to *47 U.S.C. 227(b)(3)(B)*.
- Any and all other relief that the Court deems just and proper.

SECOND CAUSE OF ACTION

Knowing and/or Willful Violations of the Telephone Consumer Protection Act

47 U.S.C. §227(b)

- As a result of Defendant' willful and/or knowing violations of 47 U.S.C. §227(b)(1), Plaintiff and the ATDS Class and ATDS Revocation Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. §227(b)(3)(B) and 47 U.S.C. §227(b)(3)(C).
- Any and all other relief that the Court deems just and proper.

JURY DEMAND

44. Pursuant to the Seventh Amendment to the Constitution of the United States of America, Plaintiff is entitled to, and demands, a trial by jury.

Respectfully Submitted this 13th Day of October, 2017.

LAW OFFICES OF TODD M. FRIEDMAN, P.C.

By: /s/ Todd M. Friedman
Todd M. Friedman
Law Offices of Todd M. Friedman
Attorney for Plaintiff